LABOUR DEPARTMENT

The 22nd March, 1995

No. 14/13/87-6Lab./453.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of Engineer-in-Chief, PWD (B & R), Haryana, Chandigarh *versus* Mange Ram.

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD

Reference No. 678/93

THE MANAGEMENT OF M/S ENGINEER-IN-CHIEF, PWD (B & R), HARYANA, CHANDIGARH.

2. EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT, DIVISION NO. 2, SECTOR-8, FARIDABAD

versus

SH. MANGE RAM, C/O MRS. SAVITA BHANDARI AND MISS ALKA BHATIA ADVOCATE, FARIDABAD

Present :

Mrs. Savita Bhandari, for the workman.

Sh. S. Khan, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub Section (i) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government, Endorsement No. 34227—33, dated 6th September, 1993 :—

> Whether the termination of services of Sh. Mange Ram is legal & justified? If not, to what relief, is he entitled to?

2. The case of the workman is that he was appointed as Baildar in P. W. D. Division No. 2, Sector-8, Faridabad on 1st May, 1985 and his last drawn wages were Rs. 38.15 per day. His work had remained satisfactory throughout the period of 8 years. He was made to understood that he was being appointed against a permanent post but his services were terminated illegally on 6th April, 1993 without following the procedure envisaged under Section 25-F of the Act.

3. The respondents submitted written statement dated 4th May, 1994 stating therein that the workman was appointed as casual worker in May, 1985 as a daily wager. He had been drawing salary at different rates fixed under the minimum wages Act from time to time. He was assigned the job as per requirements. His services were dis-continued with effect from 4th April, 1993 when there was no need of any casual worker for attending to the work at site. No termination order or notice was required to be served on casual workers and as such the workman is not entitled to any relief. It was also pleaded that the P. W. D. of the State is not an industry within the meaning of term 'industry' defined in the Act and so this court has no jurisdiction to entertain and decide the present reference.

4. The workman submitted rejoinder dated 28th May, 1993, re-asserting the previous averments and denying the averments of the respondents.

5. On the 28th July, 1994 the case was fixed up for filing of documents, admission and denial thereof and for issues. No authorised representative appeared from the side of the respondents and so it was ordered that the respondents be proceeded against *ex parte*. The application submitted by respondents for setting aside *ex parte* proceedings dated 28th July, 1994 was dimissed,—*vide* order dated 18th October, 1994.

6. The workman has examined himself in *ex parte* evidence.

7. I have heard the authorised representatives of both the parties and have also gone through the evidence on record.

8. The workman has vouched the facts mentioned above. He has also deposed that the post of Baildar against which he was appointed was still in existence and the persons juniors to him were still working and even made regular. There is no rebuttal to this position. Apart from this, Sh. S. Khan authorised representative of the respondents has checked up the position from his record and has confirmed that the workman had worked for a continuous period of more than 240 days during the period of last 12 calendar months from the date of terminatin of his services. Admittedly no notice pay and retrenchment compensation envisaged under Section 25-F of the Act was paid to the workman at the time to termination of his services. The impugned action of the respondents terminating the services of the workman is thus, illegal and unjustified. Consequently, the workman is entitled to be reinstated in service with continuity in service and full back wages. The award is passed accordingly.

U. B. KHANDUJA,

The 2nd March, 1995.

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 313, dated the 8th March, 1995

A copy, with three spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

The 24th March, 1995

No. 14/13/87-6Lab./454.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of Transport Commissioner, Haryana *versus* Suresh Kumar.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 367/1990

Date of Receipt : 20-3-1990

Date of Decision : 9-3-1995

SHRI SURESH KUMAR, S/O RULIA RAM, VILLAGE BASS KHURD, DISTRICT HISAR .. *Applicant.*

versus

1. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH,

2. GENERAL MANAGER, HARYAHA ROADWAYS, BHIWANI .. *Respondent-Management.*

Present :
Shri S. S. Gupta, for the workman.

Shri Jagdish Pawar, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act'), the Governor of Haryana referred the following dispute between Suresh Kumar and the above mentioned management for adjudication to this Court,—*vide* Labour Department letter No. Bwn/224-89/ dated 9th March, 1990 :—

Whether termination of services of Suresh Kumar is justified and in order? If not, to what relief is he entitled?

2. According to Suresh Kumar, he was appointed as Motor Mechanic Helper by the management on 31st March, 1988, but he was removed from the job with effect from 30th March, 1989 through an oral

order. The workman claimed that termination of his services amounted to "retrenchment" as defined in Section 2(oo) of the Act and was illegal. According to him, no appointment letter was issued to him at the time of appointment and the experience certificate, it was wrongly mentioned that he was appointed as 'apprentice.' According to Suresh Kumar, he was a workman, as defined in Section 2(s) of the Act. He, therefore, prayed for reinstatement, with full back wages and other consequential benefits.

3. The management, in its written statement, contended that the applicant was engaged as an apprentice for training in the trade of Motor Mechanic, he being ITI diploma holder and during the training period of one year, the applicant was entitled to stipend only. It was stated by the management that after one year's training, the applicant was relieved alongwith other apprentices on 30th March, 1989. Subsequential, on the request of the applicant for issuing experience certificate of training, requisite certificate of apprenticeship was issued to him. It was denied that the applicant was appointed as helper on daily wages and it was therefore, claimed that provisions of the Act were not applicable in this case and the applicant was not entitled to any relief.

4. On the above pleadings of the parties, following issues were framed on 30th November, 1990 by my learned predecessor :—

(1) As per terms of reference.

(2) Whether petitioner workman has no cause of action?

(3) Relief

5. The parties led evidence in support of their rival claims. I have heard Shri S. S. Gupta, Authorised Representative of the workman and Shri Jagdish Pawar, ADA of the management and have gone through the case file. My findings on the above issues are as under :—

Issue No. 1 :

6. According to Suresh Kumar, WW-1 on his application, he was appointed as Motor Mechanic Helper on 30th March, 1988 and he worked as such for a period of one year. He claimed that no notice given to him, when he was removed from the job, nor he was paid any retrenchment compensation. He, however, stated that he was getting Rs. 400 per month.

7. On behalf of management, Krishan Lal, Clerk was examined as MW-1 and Bhoop Singh, DTC as MW-2. According to Krishan Lal, MW-1 the applicant was kept as apprentice trainee for one year,—*vide* order dated 31st March, 1988, copy of which is Ex. M-3 and that after completion of training, he was removed,—*vide* order copy of which is Ex. M-4. He stated that the applicant was not appointed against any post in Haryana Roaways, Bhiwani. It is however, admitted by him in his cross-examination the name of the applicant was not sponsored by the Industrial Training Institute (hereinafter referred to was ITI) while others, whose names figured in Ex. M-3, were sponsored by the ITI. Bhoop Singh MW-2, has stated that on completion of training, the applicant was relieved and subsequently on the application of the applicant, he was issued experience certificate,—*vide* Ex. M-2.

8. Shri S. S. Gupta Authorised Representative of the workman has aruged hotly that the expression "apprentice" used in Apprentice Act No. 52 of 1961 and used in Industrial Disputes Act has different connotation and meaning and there was no conflict between Section 18 of the Apprentice Act and Section 2(s) of the Industrial Disputes Act. According to him, an apprentice appointed under Act of 1961, would not become apprentice for the purpose of Section 2(s) of the Industrial Disputes Act and it was argued that since the workman was not admittedly enrolled as an apprentice under the Act of 1961, the case of the workman would be covered under section 2(s) of the Industrial Disputes Act. In support of his argument, he referred to the observations made by Allahabad High Court in the authority reported as **M/s Tannery and Footwear Corporation of India Ltd** *versus* **Labour Court-II, Kanpur and others, 1994-Lab. I.C. 1231** and in the earlier authority of Karnataka High Court reported as **The Management of Tungabhadra Sugar Works (P) Ltd: *versus* Presiding Officer, Labour Court and others, 1983-Lab. I. C. 1185.**.

9. On the other hand, Shri Jagdish Pawar, ADA of the management, contended that there was no relationship of "employer and employee" between the parties and the applicant being apprentice his case was not covered under Section 2(s) of the Act.

10. When we carefully persue the definition of workman as given in the Industrial Disputes Act it would be clear that any person including an apprentice, can be regarded as a workman, if he is employed in any industry to do any skilled or unskilled, manual or supervisory, technical or clerical work. In other words, the existence of relationship of an employer and an employee is of the essence of the matter. It is, therefore, clear that it is not enough to establish that the person claiming such a status, is an apprentice. On the other hand, whether the person claiming status as a workman as an apprentice or any other person, it has further to be established that he is employed in an industry, to do any skilled or unskilled, manual or

supervisory, technical or clerical work. The following observations of Hon'ble Supreme Court made in the authority reported as **Dharan Chandral Chemical Works Ltd.** *versus* **State of Saurashtra, AIR-1957-SC-264** are of importance:—

> "The essential condition of a person being a workman within the terms of the definition in Section 2(s) is that he should be employed to do the work in the industry, that there should be in other words, an employment of his by the employer that there should be relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a workman within the definition of the term as contained in the Act ....."

11. Turning to the facts of our case,—*vide* Ex. M-3, Suresh Kumar and eight others were appointed as apprentice for a period of one year and it was made clear that during training, they would get stipend as per Government instructions. On expiry of one year, eight apprentice, including Suresh Kumar, were relieved on completion of training,—*vide* Ex. M-4. Suresh Kumar, applicant thereafter moved an application that he had completed one year training as apprentice and he wanted experience certificate to this effect. A copy of this application is Ex. M-1 and copy of experience certificate, issued to him, is Ex. M-2.

12. Obviously, there is no appointment letter issued to the applicant and the fact remains that the applicant and 8 others were deployed as apprentice trainee for on year,—*vide* a composite order and they were relieved after expiry of one year on completion of their training in different trades. The management has specifically pleaded in the written statement that the applicant had never been offered appointment by General Manager, Haryana Roadways, Bhiwani and it was further pleaded that he was never appointed as helper to motor mechanic on daily wages. There is no material on the file to prove relationship of employer and employee between the parties. Under the circumstances the management would be justified in contending that Suresh Kumar is not a workman on the ground that there was no relationship of employer and employer between the parties and that the mere fact that Suresh Kumar was an apprentice or a trainee, is not enough for drawing an inference that he is a workman as defined in Section 2(s) of the Act. The applicant was offered apprenticeship,—*vide* Ex. M-3 and having accepted the same and having undergone the training as such, the applicant can not turn ground and say that he was an employee. There is no material on the file to show that there was master and sevant relationship between him and the management and merely because his name was not sponsored by ITI, it can not be deducted that there was relationship of master and servant between the parties.

13. As a result of discussion above, I hold that since Suresh Kumar is not a workman as defined in Section 2(s) of the Act, the reference made by the Government under the Industrial Disputes Act, is bad and this Court has no jurisdiction to give any relief to the applicant. This issue is, therefore, answered accordingly.

Issue No. 2 :

14. This issue was not pressed by the Authorised Representative of the management and was conceded to by him during arguments. This issue is, thus, answered against the management.

Issue No. 3– Relief :

15. In view of my findings on the above issues, as the applicant is not a "workman" as defined in Section 2(s) of the Act, the question whether termination of his services was justified or not, has become redundant. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

The 9th March, 1995.

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No. 331, dated the 10th March, 1995

A copy, with two spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.